

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARTIN ANTHONY CICALLA, JR.,

Plaintiff,

v.

DONNA ROGERS, et al.,

Defendants.

No. 2:20-cv-01999-DAD-AC

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, DENYING  
PLAINTIFF’S MOTION FOR DEFAULT  
JUDGMENT, AND DISMISSING THIS  
ACTION

(Doc. Nos. 50, 52)

Plaintiff Martin Anthony Cicalla, Jr., proceeding *pro se*, initiated this civil action on October 21, 2022, alleging one claim of breach of contract. (Doc. No. 1.) This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 8, 2022, the assigned magistrate judge issued findings and recommendations recommending that plaintiff’s motion for default judgment (Doc. No. 50) be denied because plaintiff’s operative first amended complaint (“FAC”) does not state a cognizable claim of breach of contract. (Doc. No. 52 at 5–6) (“[T]he FAC does not contains facts demonstrating the existence of a properly formed contract.”). The magistrate judge concluded that “[p]laintiff is not entitled to default judgment where he does not state any viable claim for relief.” (*Id.* at 8.) In addition, the magistrate judge also recommended that this case be dismissed due to plaintiff’s

1 failure to prosecute and failure to state a cognizable claim. (*Id.* at 8–9.) Those findings and  
2 recommendations were served on plaintiff and contained notice that any objections thereto were  
3 to be filed within twenty-one (21) days from the date of service. (*Id.* at 9.) On June 1, 2023,  
4 plaintiff filed objections to the pending findings and recommendations, along with a separate  
5 filing of exhibits and a “notice of liability,” in which plaintiff accuses the magistrate judge of  
6 conspiracy and ethics violations. (Doc. Nos. 53–55.)

7       The court has reviewed plaintiff’s filings in connection with his objections and concludes  
8 that none of them provide any reasoned analysis or basis upon which to reject the findings and  
9 recommendations. In his objections, plaintiff repeats the same arguments that were already  
10 addressed and properly rejected in the pending findings and recommendations. (Doc. No. 53.) In  
11 addition, the “new additional evidence” that plaintiff points to in his objections does not cure the  
12 deficiencies that the magistrate judge had identified because those exhibits, at best, suggest that  
13 plaintiff and defendants had discussed a draft shareholder agreement, not that they had entered  
14 into any such agreement. (*See id.* at 25–26; Doc. No. 54.) Indeed, in finding that granting  
15 plaintiff leave to file a further amended complaint would be futile, the magistrate judge explained  
16 that “[p]laintiff has already amended his complaint, and the allegations on which he relies for the  
17 existence of a contract—the exchanges between himself and Leon Rogers regarding a shareholder  
18 agreement that was never finalized[]—defeat a contract-based claim.” (Doc. No. 52 at 9.)<sup>1</sup>  
19 Accordingly, the undersigned will adopt the findings and recommendations.

20       In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a  
21 *de novo* review of the case. Having carefully reviewed the entire file, including plaintiff’s  
22 objections and exhibits, the court finds the findings and recommendations to be supported by the  
23 record and by proper analysis.

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27 <sup>1</sup> The undersigned also notes that plaintiff’s “notice of liability” (Doc. No. 55) is wholly  
28 inappropriate, borderline threatening, and will be disregarded for these reasons, in addition to it  
having no relevance to the pending findings and recommendations.

Accordingly,

1. The findings and recommendations issued on May 8, 2022 (Doc. No. 52) are adopted in full;
2. Plaintiff's motion for default judgment (Doc. No. 50) is denied;
3. This action is dismissed due to plaintiff's failure to state a cognizable claim and failure to prosecute; and
4. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: **June 15, 2023**

  
UNITED STATES DISTRICT JUDGE